



"Martinez, Adriano"
<amartinez@nrdc.org>

08/03/2006 08:58 PM

To cabrilloportpermit@EPA

cc "Martinez, Adriano" <amartinez@nrdc.org>, "Mahoney,
Mekaela" <mmahoney@nrdc.org>, "LinPerrella, Melissa"
<mlinperrella@nrdc.org>

bcc

Subject Cabrillo

Dear Mr. Lapka:

I have attached NRDC's comment letter on the Cabrillo Port Clean Air Act Permit. Please contact me if there is any problem with the transmission of this document. As a courtesy, I have also faxed the document to your office and placed a hard copy in the mail.

Thanks,
Adrian

Adrian Martinez
Natural Resources Defense Council
1314 Second St.
Santa Monica, CA 90401
p: 310.434.2300
f: 310.434.2399

PRIVILEGE AND CONFIDENTIALITY NOTICE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law as attorney client and work-product confidential or otherwise confidential communications. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication or other use of a transmission received in error is strictly prohibited. If you have received this transmission in error, immediately notify us at the above telephone number.



Final Comments re Cabrillo Port Clean Air Act Permit.pdf



NATURAL RESOURCES DEFENSE COUNCIL

August 3, 2006

Joe Lapka (AIR-3)
U.S. Environmental Protection Agency
Region 9
75 Hawthorne St.
San Francisco, CA 94105-3901
(415) 947-4226
cabrilloportpermit@epa.gov

VIA Email and U.S. Mail

**RE: Proposed Clean Air Act Permit for BHP Billiton's Cabrillo Port
Liquefied Natural Gas Deepwater Port**

Dear Mr. Lapka:

We write on behalf of the Natural Resources Defense Council ("NRDC") and our over 1.2 million members, tens of thousands of whom reside in Southern California regarding the U.S. Environmental Protection Agency's ("EPA") proposed Clean Air Act ("CAA") permit that would grant conditional approval to BHP Billiton LNG International Inc. ("BHP") to construct a liquefied natural gas ("LNG") facility off the Coast of Ventura County. We are deeply concerned that the proposed permit, as currently written, violates the Deepwater Port Act ("DPA"), the CAA, and applicable State law. In particular, the permit allows for the production of large quantities of smog-producing air pollution every year without requiring offsets or stringent pollution control technology. This pollution will have devastating impacts on the air quality of Southern California, a region already failing to meet federal and state air quality standards. Accordingly, we strongly urge EPA to refrain from granting the permit as proposed. Further, if EPA decides to follow through with permitting Cabrillo Port, it must revise the permit to cure the defects outlined below, and release it for a new round of public review and comments.

I. Legal Authority.

The DPA and CAA create the regulatory framework for addressing air pollution stemming from Cabrillo Port.¹ The DPA charges the EPA with the responsibility for determining whether BHP may receive an Authority to Construct ("ATC") permit. The DPA is structured

¹ The comment letter submitted by Environmental Defense Center ("EDC") contains a more lengthy and comprehensive analysis of the applicable laws and we incorporate EDC's discussion herein.

to ensure protection of coastal environments near deepwater ports and to preserve the rights of states near deepwater ports to protect their environment, which includes air quality.² Deepwater ports are also subject to the regulations of the United States, including the CAA.³ Additionally, the DPA mandates that deepwater ports, such as Cabrillo Port, are subject to the laws of the “nearest adjacent state,” including state laws that are more stringent than federal law, unless those laws are inconsistent with the DPA or other federal laws.⁴ For Cabrillo Port, the laws of the Ventura County Air Pollution Control District (“VCAPCD”) apply.⁵

II. Cabrillo Port Must Comply with VCAPCD Rule 26.2.

In issuing the proposed permit, EPA erroneously concluded that Cabrillo Port should be permitted as if it were a new source located in the federally designated “unclassifiable/attainment” area of Anacapa Island and San Nicolas Island, and exempts the port from VCAPCD Rule 26.2. Neither the facts nor the law support EPA’s conclusion.

Indeed, as demonstrated below, the law requires Ventura County’s nonattainment status for ozone to apply to Cabrillo Port, which would then trigger the requirements under VCAPCD Rule 26.2. Further, it is crucial that Cabrillo Port be permitted in compliance with VCAPCD 26.2 because the proposed project will have devastating impacts on mainland air quality. Moreover, none of the factors cited by EPA support its permitting Cabrillo Port as if it were on the Channel Islands, and the exemption for sources on the Islands under VCAPCD rule 26.3 is facially inapplicable. Accordingly, EPA must not grant the proposed permit as currently drafted.

A. Cabrillo Port Must be Permitted In Accordance With Mainland Ozone Nonattainment Area Requirements.

As discussed below, the proximity of Cabrillo Port to mainland Ventura County and the express definition of “nearest adjacent coastal state” require EPA to permit the port in accordance with all rules applicable to mainland ozone nonattainment areas.

First, geographic location plays a critical role in determining what law applies when laws differ from place to place within an adjacent state, as evidenced by DPA’s mandate that the “law of the nearest adjacent coastal State” applies.⁶ Under the DPA, EPA has determined that California is the nearest coastal state to Cabrillo Port,⁷ and that based on “the location of the proposed source and its potential to impact onshore air quality,” VCAPCD regulations should apply.⁸ In this case, Cabrillo Port is closer to the mainland than it is to either Anacapa

² 33 U.S.C. § 1501(a)(2) and (4).

³ 33 U.S.C. § 1518(b).

⁴ *Id.*

⁵ *See id.*; *see also* Statement of Basis, at 12 (hereinafter “SOB”).

⁶ *See* 33 U.S.C. § 1502(1).

⁷ *See* SOB at 11-12.

⁸ SOB at 12.

or San Nicolas Island. Cabrillo Port would be located 13.8 miles from the nearest mainland landfall in Ventura County, 21.4 miles from Anacapa Island, and over 45 miles from San Nicolas Island.⁹ Accordingly, the mainland ozone nonattainment area is the “nearest” adjacent area within California, and the proposed permit must be amended to comply with the rules applicable to that area.

Second, the permit requirements for outer continental shelf (“OCS”) sources highlight the importance of “proximity” when determining whether attainment or nonattainment area designations apply to a source. Indeed, in light of the significant impacts that offshore sources can have on coastal air quality, OCS sources located within 25 miles of a state’s seaward boundary are subject to the same requirements that would apply if the source were located in the corresponding onshore area.¹⁰ More importantly, “corresponding onshore area” is defined as “the onshore attainment or nonattainment area that is *closest to the source*.”¹¹ Given that deepwater ports were intended to be treated like OCS sources,¹² it makes sense that the air quality designation for mainland Ventura County would apply to Cabrillo Port.¹³

Third, neither Anacapa nor San Nicolas Island meet the express definition of the “nearest adjacent coastal state” under the DPA. Indeed, the DPA defines “nearest adjacent coastal state” to include the state “which (A) would be directly connected by pipeline to a deepwater port, as proposed in an application; (B) would be located within 15 miles of any such proposed deepwaterport; or (C) is designated by the Secretary in accordance with section 1508(a)(2) of this title . . .”¹⁴ Cabrillo Port would be directly connected by pipeline to the mainland.¹⁵ Also, as stated above, Cabrillo Port would be located within 15 miles of the mainland (but 21.4 miles and over 45 miles, respectively, from Anacapa Island and San Nicolas Island). Thus, while the mainland area meets the definition of “nearest adjacent coastal state,” neither island meets this definition.

⁹ California State Lands Commission, Revised Draft Environmental Impact Report for the Cabrillo Port Liquefied Natural Gas Deepwater Port, at Fig. 2.1-2 (March 2006) (hereinafter “Revised DEIR”)

¹⁰ 42 U.S.C. § 7627(a)(1).

¹¹ 42 U.S.C. § 7627(a)(4)(B) (emphasis added).

¹² Legislative history indicates that deepwater ports were intended to be treated like OCS sources. See Section 19(b) of Senate Report 93-1217 (Oct. 2, 1974) (stating that the effect of the DPA section regarding the application of state law is to “establish a system of deepwater port regulation similar to that governing the operation of structures erected on the Outer Continental Shelf in accordance with the Outer Continental Shelf Lands Act”).

¹³ Further, the impacts of Cabrillo Port are similar to those of OCS sources given its proximity to the shoreline and potential for causing onshore impacts.

¹⁴ 33 U.S.C. § 1502(1).

¹⁵ SOB at 12.

B. Cabrillo Port Must be Permitted In A Manner That Protects Mainland Air Quality.

As stated above, the DPA is intended to protect the marine and coastal environment in the vicinity of a deepwater port and preserve the rights of the states to protect their environment.¹⁶ Accordingly, EPA must demonstrate that its proposed permit protects the coastal environment and preserves the right of California to protect its environment. As demonstrated below, Cabrillo Port must be permitted in accordance with mainland nonattainment area requirements because the project would have devastating impacts on Ventura and Los Angeles Counties' air quality, and undermine the ability of those regions to attain and maintain state and federal ozone air quality standards.

Indeed, emissions from Cabrillo Port would significantly impact coastal mainland air quality by exacerbating the ozone problems of the Ventura and South Coast air basins. In fact, the DEIS/EIR for Cabrillo Port specified that emissions from the Project will be generated in both Los Angeles and Ventura Counties, and that prevailing northwesterly sea winds in the region will likely impact the South Coast Air Basin.¹⁷ The Revised DEIR also quoted CARB's concern that "these emissions [from offshore activities] can reach the California coastline and add to the air pollution burden of downwind regions, e.g., South Coast Air Basin..."¹⁸ Further, we are persuaded by the expert analysis performed by Ms. Camille Sears, as detailed in EDC's comments, which concludes that offshore emissions from Cabrillo Port will significantly contribute to onshore ozone nonattainment problems.

In addition, Congress recognized that offshore sources can have significant onshore impacts when it directed EPA to control OCS sources.¹⁹ In fact, in enacting OCS requirements, Congress was deeply concerned by OCS sources causing or contributing to the violation of federal and state ambient air quality standards in coastal regions—particularly California.²⁰ Even EPA recognized the usefulness of the OCS analogy in an April 2005 letter to Steve Meheen, BHP Project Manager, to conclude that offsets would be required for the project.²¹ Nonetheless, inexplicably EPA has changed course and its SOB provides no explanation for why such authorities should not guide EPA's permitting decision now.

¹⁶ 33 U.S.C. § 1501(a)(2) and (4).

¹⁷ California State Lands Commission, Draft Environmental Impact Report for the Cabrillo Port Liquefied Natural Gas Deepwater Port, at 4.6-4 and 4.1-12 (October 2004) (hereinafter "DEIS").

¹⁸ Revised DEIR, at 4.6-33 (citing Letter from D.C. Simeroth, Chief, Criteria Pollutants Branch, Stationary Source Division, California Air Resources Board to California State Lands Commission (October 2005)).

¹⁹ See 42 U.S.C. § 7627(a)(4)(B).

²⁰ S.Rep.101-228, 101st Cong., 1st Sess.28 (1990).

²¹ Letter from Gerardo Rios, Permits Office, EPA Region 9, to Steve Meheen, Project Manager, BHP (April 5, 2004).

III. EPA Incorrectly Proposes to Permit Cabrillo Port in the Same Manner as Sources on the Channel Islands.

Without sufficient elaboration, EPA relied on three factors in proposing to permit Cabrillo Port as if it were on the Channel Islands—(1) “location of the [Floating Storage and Regasification Unit (“FSRU”)] in relation to the Channel Islands,” (2) “current uses of the Channel Islands” and (3) “the amount of emissions and the air quality impact to be expected from the stationary source.”²² However, none of these factors support EPA’s decision to treat Cabrillo Port as if it were on the Channel Islands. Further, EPA previously relied on these same factors to conclude that Cabrillo Port would be subject to VCAPCD Rule 26.2.

First, as discussed above, Cabrillo Port would be located approximately 14 miles from the nearest mainland landfall in Ventura County, but approximately 21 miles from Anacapa Island and more than 45 miles from San Nicolas Island.²³ Undeniably, this proposed project is closer to mainland Ventura County than the Channel Islands.

Second, the current uses of the Channel Islands are not consistent with a source such as Cabrillo Port. As noted previously by EPA, the Channel Islands are currently used for parks and recreation, and by the U.S. Navy.²⁴ Further, emissions from naval uses on these islands are minor and were never expected to have a significant impact on air quality.²⁵ In stark contrast, Cabrillo Port will produce many tons more of smog-producing air pollution every year. Also, without question, Cabrillo Port cannot be considered compatible with the use of these Islands as national parks.

Third, as repeatedly highlighted above, the amount of emissions generated by Cabrillo Port would be significant, and would impact coastal mainland air quality. Thus, none of the factors cited by EPA support its decision to permit Cabrillo Port in the same manner as sources on the Channel Islands, and in fact, only confirm that EPA must permit the port in accordance with mainland ozone nonattainment requirements.

IV. VCAPCD Rule 26.3 Exemption Is Facially Inapplicable.

EPA asserts that Cabrillo Port is somehow exempt from VCAPCD Rule 26.2 under Rule 26.3, which exempts “any emissions unit located *on* San Nicolas Island or Anacapa Island.”²⁶ However, Cabrillo Port would not be located “on” either Island. As discussed above, the port would be over 45 miles from San Nicolas Island and 21 miles from Anacapa Island.²⁷ Additionally, the VCAPCD’s approval of the Rule 26.3 exemption was premised on the air

²² SOB, at 17.

²³ See Revised DEIR, at 2-2.

²⁴ See Letter from Barbara Mecleod, Senior Special Assistant, EPA, to Bob Middleton, Director, White House Task Force on Energy Project Streamlining (July 7, 2004).

²⁵ VCAPCD, Final Environmental Impact Report: Proposed Revisions to the Ventura County Air Pollution Control Districts’ New Source Review Rule at 31-32 (December 1997).

²⁶ SOB at 18 (emphasis added).

²⁷ Revised DEIR at Fig. 2.1-2.

district's intention that the only source of emissions subject to the exemption would be those operated by the U.S. Navy, and its expectation that any new emissions units or increases in emissions would be minor.²⁸ As discussed above, emissions from Cabrillo Port would hardly be minor. Thus, EPA's decision to exempt Cabrillo Port from VCAPCD Rule 26.2 is not supported by either the plain language or the intent of Rule 26.3.

V. The Proposed Permit Does Not Comply with VCAPCD Rule 26.2.

As outlined above, this permit must comply with Rule 26.2, which requires "any new, replacement, modified or relocated emissions unit which would have the potential to emit" NOx, ROC, PM10 or SOx to comply with BACT²⁹ and obtain emission credit offsets.³⁰ Since the permit fails to require this, EPA must revise its permit in accordance with Rule 26.2.

A. The Permit Does Not Require Cabrillo Port to Be Equipped with BACT.

While EPA notes that BHP has a commitment to control emissions using BACT, it is our understanding that this is not true. In fact, we are persuaded by, and join, EDC's comments that BACT has not been required for the two principal air emissions sources on the FRSU, or for marine vessels.

B. The Permit Does Not Require BHP to Offset the Emissions Increase Associated with Cabrillo Port.

Under VCAPCD Rule 26.2, an ATC must not be issued for a source with potential to emit ROC or NOx (greater than or equal to 5 tons/year), or to emit PM10 or SOx (greater than or equal to 15 tons/year) unless emissions offsets are provided based on the amount of pollutants emitted by the new source.³¹ Offsets are based on the "potential to emit." In addition, whatever offsets are used must be "real, quantifiable, permanent, enforceable, and surplus."³² The entire amount of emission reductions from BHP's proposed "air quality improvement" projects would not meet these criteria to qualify as offsets under the rule. For example, some of the emissions reductions for projects have been folded into the emissions estimates for Cabrillo Port, and they cannot concurrently be classified as reducing and offsetting a project's emissions.

VI. Additional Concerns Regarding the Proposed Permit.

In addition to the issues raised above, we share in the concerns raised by EDC that EPA likely underestimated Cabrillo Port's "potential to emit," and incorrectly concluded that

²⁸ VCAPCD, Final Environmental Impact Report: Proposed Revisions to the Ventura County Air Pollution Control District's New Source Review Rule (Rule 26), at 31-32 (December 1997).

²⁹ See VCAPCD Rule 26.2A.

³⁰ See VCAPCD Rule 26.2B.

³¹ VCAPCD Rule 26.2.

³² VCAPCD Rule 26.4.

Mr. Joe Lapka
8/3/2006
Page 7 of 7

“prevention of significant deterioration” requirements do not apply. Accordingly, we join EDC’s comments on these important issues.

VII. Conclusion.

EPA must not issue the Cabrillo Port permit as written because it violates federal and state laws. We urge EPA to comply with federal and state laws and revise the permit as outlined above, including requiring implementation of BACT and emissions offsets. We appreciate the opportunity to comment on this proposed permit, and we look forward to working with EPA in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Adrian L. Martinez", followed by a long horizontal line extending to the right.

Adrian L. Martinez
Natural Resources Defense Council